



LAKE COUNTY FLORIDA

MODIFICATION OF CONTRACT

| | |
|---|--|
| 1. Modification No.: 1 Effective Date: 7/30/2015 | 2. Contract No.: 15-0009 Effective Date: 7/1/2015 |
| 3. Contracting Officer: Susan Dugan Telephone Number: (352) 343-9768 | 5. Contractor Name and Address: Flex-Plan Services, Inc. 11400 SE 6th St, Suite 125 Bellevue, WA 98004-6419 |
| 4. Issued By: Procurement Services Lake County Administration Building 315 W. Main St., Suite 441 Tavares, Florida 32778-7800 | |
| 6. SPECIAL INSTRUCTIONS: Contractor is required to sign Block 8 showing acceptance of the below written modification and <u>return this form to address shown in Block 4 within ten (10) days after receipt</u> , preferably by certified mail to ensure a system of positive receipts. Retain a photocopy of the signed copy of this modification and attach to original of contract, which was previously provided. | |
| 7. DESCRIPTION OF MODIFICATION: As of July 29, 2015 Flex-Plan Services, Inc. has changed it's name to Navia Benefit Solutions keeping the same address. | |
| 8. Contractor's Signature <u>NOT REQUIRED</u> See attached letter from Matt Aitken dated July 30, 2015 | 9. Lake County, Florida By: <u>Susan Dugan</u> Senior Contracting Officer <u>11-5/2015</u> Date |
| 10. Distribution: Original - Bid No. 15-0009 | |



July 30, 2015

RE: CORPORATE NAME CHANGE FOR FLEX-PLAN SERVICES, INC.

To Whom It May Concern:

As of July 29, 2015, the business you knew as Flex-Plan Services, Inc. has become Navia Benefit Solutions. This change has no legal affect on our agreements or relationship; however, if your entity requires some other formal document to process our name change in your systems please let us know.

Our UBI number, EIN, bank account numbers, and business structure have not changed.

The following will change:

- Our new website is www.naviabenefits.com. The site will launch in late September. If you visit our old website, www.flex-plan.com, you will automatically be redirected to the new site.
- Email prefixes will remain the same, but our email domain will be changing to naviabenefits.com. For example, claims@naviabenefits.com, customerservice@naviabenefits.com. Any emails sent to flex-plan.com, will be redirected.
- Phone numbers and fax numbers will remain the same.

Please contact us if you have any questions. Thank you!

Sincerely,

A handwritten signature in black ink that reads "Matt Aitken". The signature is written in a cursive, flowing style.

Matt Aitken
Vice President

Form

W-9(Rev. December 2014)
Department of the Treasury
Internal Revenue Service**Request for Taxpayer
Identification Number and Certification****Give Form to the
requester. Do not
send to the IRS.**

| | | |
|---|---|---|
| Print or type See Specific Instructions on page 2. | 1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Navia Benefit Solutions | |
| | 2 Business name/disregarded entity name, if different from above | |
| | 3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____ | 4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i> |
| | 5 Address (number, street, and apt. or suite no.) 11400 SE 6th St, Suite 125 | Requester's name and address (optional) |
| | 6 City, state, and ZIP code Bellevue, WA 98004 | |
| 7 List account number(s) here (optional) | | |

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

| Social security number | | | | | | | | |
|--------------------------------|---|--|---|---|---|---|---|-------|
| | | | - | | | | | |
| or | | | | | | | | |
| Employer identification number | | | | | | | | |
| 9 | 1 | | - | 1 | 4 | 6 | 7 | 7 5 8 |

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

| | | |
|------------------|--|-----------------------|
| Sign Here | Signature of U.S. person ▶ <i>Michelle Chester</i> | Date ▶ <i>7/29/15</i> |
|------------------|--|-----------------------|

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)

- Form 1099-C (canceled debt)

- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Dugan, Susan

From: Allen, Chelsea <callen@naviabenefits.com>
Sent: Wednesday, November 04, 2015 10:46 AM
To: Dugan, Susan
Cc: Perry, Barbara; Anderson, Robert; Naas, Miriam; Jenkins, Beth; Johnson, Diana M.
Subject: RE: Flex-Plan Services soon to be Navia Benefit Solutions
Attachments: Navia Benefit Solutions Name Change Letter.pdf; Navia W-9.pdf

Hello All,

It seems there is a little confusion, as we did not change our EIN and have not merged with another company. The purpose of our name change from Flex-Plan Services to Navia Benefit Solutions was for rebranding and an effort to show potential clientele that we administer many more benefits than just "Flex-Plans". Attached is our formal name change letter and new W9, which confirm these points.

Thank you,



Chelsea Allen
Account Associate

Navia Benefit Solutions (Formerly Flex-Plan Services)
www.naviabenefits.com | (425) 452-3468 | callen@naviabenefits.com



From: Dugan, Susan [mailto:SDugan@lakecountyfl.gov]
Sent: Tuesday, November 03, 2015 6:43 AM
To: EDR
Cc: Perry, Barbara; Anderson, Robert; Naas, Miriam; Jenkins, Beth; Johnson, Diana M.
Subject: ***SUSPECT*** FW: Flex-Plan Services soon to be Navia Benefit Solutions

Please see the highlighted questions below from our county attorney's office. I need to wrap this up quickly as the service is already being provided and we do not have a contract in place.

Thank you

Susan K. Dugan
Senior Contracting Officer

Lake County Procurement Services
315 West Main Street, Room 441
sdugan@lakecountyfl.gov

From: Johnson, Diana M.
Sent: Tuesday, November 03, 2015 8:25 AM
To: Dugan, Susan
Cc: Atkinson, Nova; Perry, Barbara; Jenkins, Beth; Anderson, Robert
Subject: RE: Flex-Plan Services soon to be Navia Benefit Solutions

Can we get more information from the company on why they are changing their name from Flex to Navia. I see from the email that they say they are "rebranding" but in that case typically do not change their EIN number. Did they merge with another company? If this is the case, we advise that do an amendment to the contract. I would be happy to assist with preparing the amendment if you could send me the current contract. I would also need to know who is principal of the new company that would be signing the amendment and if they have any new contact information.

Thank you,

Diana Johnson

Assistant County Attorney
Lake County Attorney's Office
P.O. Box 7800, Tavares, FL 32778
☎ (352) 343-9787

✉ dmjohnson@lakecountyfl.gov

Please note: Florida has a very broad public records law. Your e-mail communications may be subject to public disclosure.

From: Dugan, Susan
Sent: Monday, November 2, 2015 4:48 PM
To: Johnson, Diana M.
Subject: RE: Flex-Plan Services soon to be Navia Benefit Solutions

No the FEIN is different and I have the W-9

Susan K. Dugan
Senior Contracting Officer

Lake County Procurement Services
315 West Main Street, Room 441
sdugan@lakecountyfl.gov

From: Johnson, Diana M.
Sent: Monday, November 02, 2015 12:14 PM
To: Dugan, Susan
Cc: Perry, Barbara; Jenkins, Beth; Naas, Miriam; Anderson, Robert; Atkinson, Nova
Subject: RE: Flex-Plan Services soon to be Navia Benefit Solutions

Susan, if the company is indeed the same (same FEIN number) just a change in name than the one page contract modification form is fine with our office. Thank you.

Diana Johnson

Assistant County Attorney
Lake County Attorney's Office
P.O. Box 7800, Tavares, FL 32778
☎ (352) 343-9787

✉ dmjohnson@lakecountyfl.gov

Please note: Florida has a very broad public records law. Your e-mail communications may be subject to public disclosure.

From: Dugan, Susan
Sent: Tuesday, October 27, 2015 10:37 AM
To: Johnson, Diana M.
Cc: Perry, Barbara; Jenkins, Beth; Naas, Miriam; Anderson, Robert
Subject: FW: Flex-Plan Services soon to be Navia Benefit Solutions

The County has signed contracts on September 15, 2015 with Flex-Plan Services to provide "Retiree Billing & Cobra Administrative Services along with a Business Associate Agreement".

Human Resources is sending in a requisition to get a purchase order to Navia Benefit Solutions for these services, which is Flex-Plan Services new name per the e-mail below.

What paperwork is necessary for me to get this name changed to Navia Benefit Solutions? Can I use our simple one page contract modification form for this?

Susan K. Dugan
Senior Contracting Officer

Lake County Procurement Services
315 West Main Street, Room 441
sdugan@lakecountyfl.gov

From: Naas, Miriam
Sent: Tuesday, October 27, 2015 9:36 AM
To: Dugan, Susan
Subject: FW: Flex-Plan Services soon to be Navia Benefit Solutions

From: Perry, Barbara
Sent: Wednesday, July 29, 2015 8:17 AM
To: Jenkins, Beth; Naas, Miriam; Anderson, Robert
Subject: FW: Flex-Plan Services soon to be Navia Benefit Solutions

FYI – Looks like Flex Plan is changing its name..

Thank You,

Barbara Perry

Risk and Benefits Manager
Human Resources Department
Lake County Board of County Commissioners

From: Employer Services [<mailto:employerservices@flex-plan.com>]
Sent: Tuesday, July 28, 2015 12:38 PM
To: Perry, Barbara
Subject: Flex-Plan Services soon to be Navia Benefit Solutions



Introducing Navia Benefit Solutions!

Flex-Plan Services is excited to announce that we are changing our name to Navia Benefit Solutions. We have expanded our benefit offerings and services to include much more than "Flex-Plans" and we want a name that is relevant to what we do: help people navigate the waters of IRS tax benefits and other employer sponsored benefit programs.

We have undergone a fairly intense rebranding, focusing on who we are and what we do. Our Mission is to empower organizations with guidance, tools, and wisdom and to advocate for the health and well-being of employees. Our Core Values embody who we are and what we do, check them out! [Navia Core Values](#)

We are launching our website in late September and will touch base in early September to remind you of this change and give an exact date. Here are some details pertaining to the change:

- We will be Navia Benefit Solutions (Formerly Flex-Plan Services) for at least a year, which should help to curb confusion.
- BANKING ACTION NEEDED:
 - Please add Navia Benefit Solutions to your bank clearance by August 14th so that when we debit for plan funding or invoices, your bank will recognize that we are an approved vendor. Our bank account number and ACH ID will not change, just our name.
 - If you write checks to us, please make payable to Navia Benefit Solutions starting August 14th.
- Come September, the website will have a new look and feel, there will be no changes to functionality at this time. In December, we will upgrade the Participant Portal and are planning some upgrades to the Employer Portal in the middle of 2016.
- No change to username or password on the website.
- Any emails or website visits to the old flex-plan.com domain will automatically be re-routed to our naviabenefits.com domain. We recommend whitelisting our new email domain name to ensure a smooth transition.
- No new debit cards issued. Participants that currently have a card will receive a Navia card as their cards expire.
- No need to update or amend contracts or legal plan documents.
- We will put a splash page up on our website in August to notify users of the change.

As always, Flex-Plan (soon to be Navia) values our partnership with you and we look forward to working with you in the coming years.

Warm Regards,

The Flex-Plan Team

(Soon to be the Navia Team!)

This electronic communication and all attachments may contain privileged and confidential information and is intended solely for the intended recipient. If you are not the intended recipient please notify the sender immediately and delete the message and any attachments from your systems—you may NOT use, disclose, copy or disseminate this communication or any attachments. If this communication includes information regarding federal taxes we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This electronic communication and all attachments may contain privileged and confidential information and is intended solely for the intended recipient. If you are not the intended recipient please notify the sender immediately and delete the message and any attachments from your systems—you may NOT use, disclose, copy or disseminate this communication or any attachments. If this communication includes information regarding federal taxes we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

RFP #15-0009

RETIREE BILLING ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement") between Flex-Plan Services, Inc. ("Flex-Plan") and Lake County, A Political Subdivision Of The State Of Florida, ("Employer"), effective July 1, 2015 ("Effective Date"), specifies the services to be provided by Flex-Plan for the Employer's Retiree Billing Services.

RECITALS

WHEREAS, the Employer maintains several group health Plans for the benefit of its eligible employees and retired employees; and

WHEREAS, Pursuant to RFP #15-0009, the Employer desires to engage Flex-Plan in Third Party Administration (TPA) services to assist the Employer in providing insurance benefits to certain retired employees of the Employer, and Flex-Plan desires to provide such services upon certain terms and conditions.

NOW, THEREFORE, in consideration of the foregoing and the terms conditions set forth in this document, the Employer and Flex-Plan agree as follows:

1. DEFINITIONS

- 1.1. "Agreement" means this Administration Agreement, its Addenda and Schedules, as any of them may be amended from time-to-time.
- 1.2. "Business Associate Agreement", "BAA" means an agreement between the Employer and Flex-Plan which outlines responsibilities between the Employer and Flex Plan Services as it relates to HIPAA, HITECH and PHI compliance, attached hereto and incorporated herein by reference as Schedule C.
- 1.3. "Carrier" means (a) any company that acts as an insurer or (b) a self-insured Plan.
- 1.4. "Continuation Coverage" means the extended group health plan coverage for retired employees.
- 1.5. "Election Notice" means the notice of the right to elect Continuation Coverage the Plan administrator provides to Retirees.
- 1.6. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
- 1.7. "HIPAA" means the group health plan portability provisions or the administrative simplification provisions, as applicable, of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations thereunder.
- 1.8. "HITECH" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy) and the regulations thereunder.
- 1.9. "Monthly Contribution Amount" means the amount that must be contributed by or on behalf of a Retiree for a month of Continuation Coverage.
- 1.10. "Notice of Qualifying Event" means the notice provided by the Retiree to the Plan administrator of a Qualifying Event.
- 1.11. "Plan" means the group health Plan(s) sponsored by the Employer for Retirees.

- 1.12. "Protected Health Information" means Protected Health Information as described by HIPAA and its supporting rules and regulations.
- 1.13. "Qualifying Event" means a qualifying event within the meaning of the Employer's Plan document for the group sponsored benefits for the Retiree population.
- 1.14. "RFP" means the Request for Proposals including the Scope of Work issued by the Employer and Flex-Plan's response referenced within this agreement as Schedule B.
- 1.15. "Retiree" means a retired employee of the Employer who has coverage under any of the group health Plans.
- 1.16. "Retiree Billing Group Application" means the "Retiree Billing Group Application" provided to the Employer for completion by the Employer prior to the initial account setup by Flex-Plan.
- 1.17. "Schedule A" means the page titled Schedule A – Selected Services and Fees in this Agreement that itemizes the standard services, fees and charges, for a designated period of time, provided by Flex-Plan to the Employer, as well as any optional services that are available to and/or chosen by the Employer, subject to the terms and conditions of this Agreement.
- 1.18. "TPA" or "Third Party Administrator" means Flex-Plan Services, Inc. who agrees to perform the delegated services specified in this agreement on behalf of the Employer.

2. GENERAL PROVISIONS

- 2.1. The Employer has selected Flex-Plan to provide the services identified herein pursuant to Request for Proposal (RFP) # 15-0009. Flex-Plan agrees to provide the services set forth in the Statement of Work shown in RFP # 15-0009, attached hereto and incorporated herein by reference as **Schedule B**. The parties hereby agree that the provisions of this Agreement more fully define the Statement of Work, but in the event of a conflict between the Statement of Work and the provisions herein, the provision which is more favorable to the Employer shall prevail.
- 2.2. The Employer must submit a completed and signed Retiree Billing Group Application and the plan design/parameters/policies (the document describing the Retiree Billing Administration Process, i.e. required correspondence, billing, deadlines, extensions, termination procedures, collection, payment methods and any other information required by Flex-Plan to administer the plan in accordance with the employers policies and directives) at least sixty (60) days in advance of the Effective Date, or, if later, within thirty (30) days after the execution of this Agreement, unless otherwise agreed.
- 2.3. The Employer acknowledges that it is the "Employer," "Plan sponsor," and "Plan administrator" of the Plan for purposes of ERISA, the Internal Revenue Code and the Public Health Services Act, and that the Employer retains the full responsibility under the law for its and the Plan's compliance.
- 2.4. The Employer shall also have final authority on all questions, including matters of clerical error, or concerning Retiree's eligibility for Continuation Coverage under the Plan.
- 2.5. The Employer has the absolute authority with respect to the control, management, investment, or disposition and utilization of all Plan assets, if any; and Flex-Plan shall neither have nor be deemed to exercise any discretion, control, or authority with respect to the disposition of any Plan assets.
- 2.6. The Employer, the Plan, the Plan's administrator, their agents or assigns, and not Flex-Plan, is solely responsible for the review and payment of claims for benefits under the Plan and all Plan

appeals under ERISA, including, without limitation, with respect to claims, benefits and eligibility determinations under the Plan.

- 2.7. The Employer has the responsibility to pay, or to cause to be paid, all excise taxes required under Internal Revenue Code section 4980B, as and when required, and to file, or to cause to be filed, IRS Form 8928, as and when required.
- 2.8. The Employer will promptly furnish to Flex-Plan such records and information in its possession or control as Flex-Plan may request to perform its obligations under this Agreement. The Employer has full responsibility and holds Flex-Plan harmless if incorrect information is provided to Flex-Plan by the Employer, its employees or its representatives, including Carriers. This includes, but is not exclusive to, Retiree Billing Monthly Contribution Amounts.
- 2.9. In performing its duties and responsibilities pursuant to the Agreement, Flex-Plan acts as the agent of the Employer and at the direction of the Employer. Flex-Plan is not the "Plan administrator" or a "named fiduciary" (as those terms are defined in ERISA, the Internal Revenue Code, or the Public Health Services Act) with respect to the Plan.
- 2.10. Flex-Plan has no responsibility for the payment or reimbursement of any health care claims under the Plan.
- 2.11. Flex-Plan's duty and responsibility is limited to providing Retiree premium billing services to the Employer. Any other requirements imposed by the Employer or the Plan(s) are not the responsibility of Flex-Plan.
- 2.12. Flex-Plan is not "a person who is responsible . . . for administering or providing benefits under the Plan" within the meaning of Internal Revenue Code section 4980B (e)(1)(B). Flex-Plan is not responsible for the payment of excise taxes imposed under Internal Revenue Code section 4980B and is not responsible for the preparation or filing of Internal Revenue Service Form 8928. Flex-Plan shall provide such information as Employer reasonably requests in order to calculate excise taxes imposed under Internal Revenue Code section 4980B or to prepare IRS Form 8928.
- 2.13. Unless otherwise notified in writing, Flex-Plan will be entitled to conclusively presume that a retiree's eligibility for Continuation Coverage under the Employer's Plan(s) has not terminated by reason of coverage under another group health Plan or by becoming eligible for Medicare.
- 2.14. Flex-Plan is authorized to modify its internal procedures or processes in order to comply with applicable rules and regulations or to obtain administrative efficiencies. Any changes that impact the processes or responsibilities of the Employer will be communicated in a timely manner.
- 2.15. Flex-Plan shall maintain and archive all pertinent data for as long as the Agreement is in effect. Upon termination of the Agreement, Flex-Plan will return any Plan materials subject to the terms described in the Termination Section. Flex Plan will provide access to records, in a mutually agreeable method, in its possessions after the termination of this Agreement if requested by the Employer.
- 2.16. With the exception of a change in fees as described in Fees and Charges Section, this Agreement may be amended only in writing and signed by an officer of each party.
- 2.17. Failure by the Employer or Flex-Plan to insist upon compliance with any provision of the Agreement at any time or under any given set of circumstances shall not operate to waive or modify such

provision or in any manner render it unenforceable, as to any other time or as to any other occurrence, whether or not the circumstances are the same.

- 2.18. No waiver of any of the terms and conditions of this Agreement shall be valid unless contained in a written memorandum and signed by an officer of the waiving party.
- 2.19. This Agreement is the final and complete Agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous negotiations or Agreements, written or oral, regarding such subject matter.
- 2.20. No assignment by any party pertaining to this Agreement shall be valid without the consent of the other party.
- 2.21. Unless superseded by Federal law, the laws of the State of Florida shall govern this Agreement.
- 2.22. The scope of Flex-Plan's services as it relates to the Retiree Billing Services includes Retirees who are receiving coverage at the Effective Date of this Agreement, as well as Retirees who experience Qualifying Events on or after the Effective Date of this Agreement.
- 2.23. This Agreement is not intended to confer, and does not confer, upon any non-party (including any covered employee or Retiree) any rights or remedies. Any covenant, representation, or warranty made by Flex-Plan in this Agreement is made to Employer alone. Any covenant, representation, or warranty made by Employer in this Agreement is made to Flex-Plan alone.
- 2.24. All Protected Health Information as defined under HIPAA will be handled in a manner consistent with the privacy and security requirements under HIPAA. Protected Health Information will be used only for the purpose of fulfilling Flex-Plan's responsibilities under this Agreement and as permitted or required by law.
- 2.25. If, when and to the extent that a court of competent jurisdiction determines that Flex-Plan is "contractor" as that term is used in Section 119.0701, Florida Statutes, Flex-Plan shall comply with all of the Florida Public Records' laws.
- 2.26. Flex-Plan shall provide an original certificate of insurance within five (5) days of the date this Agreement is fully executed, indicated that Flex-Plan has coverage in accordance with the requirements of this section. Flex-Plan shall provide and maintain at all times during the term of this Agreement, without cost or expense to the Employer, policies of insurance, with a company or companies authorized to do business in the State of Florida. Flex-Plan is responsible for the timely provision of certificates of insurance to the Employer at the certificate holder address evidencing conformance with the contract requirements at all times throughout the term of this Agreement.

Such policies of insurance, and confirming certificates of insurance, shall insure that Flex-Plan is in accordance with the following minimum limits:

General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverages:

| | |
|-----------------------------------|-----------|
| Each Occurrence/General Aggregate | \$500,000 |
| Products-Completed Operations | \$500,000 |
| Personal & Adv. Injury | \$500,000 |
| Fire Damage | \$50,000 |

| | |
|-----------------------|----------|
| Medical Expense | \$5,000 |
| Contractual Liability | Included |

Automobile Liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverages:

| | |
|------------------------------|-----------|
| Combined Single Limit | \$300,000 |
| Or | |
| Bodily Injury (per person) | \$100,000 |
| Bodily Injury (per accident) | \$300,000 |
| Property Damage | \$100,000 |

Workers' Compensation Insurance in accordance with Washington .

Employer's Liability insurance with the following minimum limits and coverage:

| | |
|-----------------------|-----------|
| Each Accident | \$100,000 |
| Disease-Each Employee | \$100,000 |
| Disease-Policy Limit | \$500,000 |

Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) as applicable, with minimum limits of \$500,000 and annual aggregate of \$1,000,000.

Lake County, A Political Subdivision Of The State Of Florida, And The Board Of County Commissioners, shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

Certificates of insurance shall provide for a minimum of fifteen (15) days prior written notice to the Employer of any material change or cancellation of the required insurance. It is Flex-Plan's specific responsibility to ensure that any such notice is provided within the stated timeframe.

Certificates of insurance shall identify the RFP number, contract, project, etc., in the Description of Operations section of the Certificate.

The Certificate holder shall be: LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS, P.O. BOX 7800, TAVARES, FL 32778-7800.

Certificates of insurance shall evidence a waiver of subrogation in favor of the Employer, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the Employer.

The Employer shall be exempt from and in no way liable for any sums of money which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of Flex-Plan and/or subcontractor providing such insurance.

Neither approval by the Employer of any insurance supplied by Flex-Plan, nor a failure to disapprove that insurance, shall relieve Flex-Plan of full responsibility of liability damages, and accidents as set forth herein.

If it is not possible for Flex-Plan to certify compliance, on the certificate of insurance, with all of the above requirements, then Flex-Plan is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

3. RETIREE BILLING ADMINISTRATIVE RESPONSIBILITIES

3.1. FLEX-PLAN

- 3.1.1. Flex-Plan shall send correspondence to each Retiree describing Flex-Plan's role in the administration of the Plan, billing and collection process, acceptable payments methods, and Flex-Plan customer contact information, and any other information requested by the Employer.
- 3.1.2. With respect to each person who is a Retiree on the Effective Date of this Agreement, Flex-Plan shall receive by electronic download from the Employer the information that Flex-Plan deems necessary to discharge its responsibilities under this Agreement, including but not limited to name, address, SSN, plan information, coverage information (including information for covered dependents) and costs, and shall enter that information into Flex-Plan's administrative software system to create an electronic file with respect to the Retiree.
- 3.1.3. With respect to each individual who becomes a Retiree after the Effective Date of this Agreement, Flex-Plan shall receive from the Employer his or her enrollment form and shall enter the pertinent data from the form into an electronic file.
- 3.1.4. Flex-Plan shall forward to each Retiree a monthly bill for the Retiree's share of the cost of his or her Retiree insurance coverage for the ensuing month and shall send monthly late notices to any Retiree who fails to timely remit to Flex-Plan the monies due under any such bill.
- 3.1.5. Flex-Plan shall collect from Retirees the monies billed for in a secure manner compliant with financial business transaction laws and procedures, and shall forward all the monies collected to the Employer with appropriate instructions to pay insurance carriers and any other providers of Retiree coverage.
- 3.1.6. Flex-Plan will collect premiums from Retirees (or third parties on behalf of the Retirees where applicable) in a Flex-Plan lockbox. All Premiums collected by Flex-Plan in accordance with this Service Schedule will be deposited into a non-interest bearing account maintained by Flex-Plan. Flex-Plan will send to Employer all premiums collected in accordance with this Schedule, reduced by the applicable fee, by the 20th day following the end of month in which the premiums were collected. Flex-Plan shall use reasonable care and due diligence, according to IRS, DOL and ERISA standards, in performance of its duties detailed in this agreement. Should a Retiree fail to make any premium payment for insurance coverage that he or she has been receiving by the deadline set by the Employer, Flex-Plan shall notify the provider of that coverage and the Employer that the Retiree failed to pay the premium on time.
- 3.1.7. Flex- Plan shall be responsible and liable for premiums collected from Retirees, while in its possession prior to transmittal to Employer.
- 3.1.8. Flex-Plan shall reconcile all Retiree premiums received against Flex-Plan's internal records and systems.

3.2. EMPLOYER

3.2.1. The Employer shall notify Flex-Plan as soon as possible, but not later than thirty (30) days, following the occurrence of any of the following events:

- (1) The commencement of coverage for any Retiree; or
- (2) The death of a Retiree
- (3) Any other change or event affecting the Retirees Eligibility

Such notification shall be made by emailing or other electronic transfer in a format mutually agreed upon, using a method provided by Flex-Plan for this purpose.

3.2.2. The Employer shall promptly and accurately furnish to Flex-Plan such information as Flex-Plan reasonably deems necessary or appropriate for the discharge of its responsibilities hereunder.

4. MISCELLANEOUS

4.1. AUDITS

Right to Audit. The Employer reserves the right to require Flex-Plan to submit to an audit by any auditor of the Employer's choosing with Flex-Plan's approval. Flex-Plan shall provide access to all of its records in Flex-Plan's possession in the normal course of business, which relate directly or indirectly to this Agreement at its place of business during regular business hours, consistent with HIPAA and other applicable privacy and security laws. Upon request, Flex-Plan shall make such records them available to the Employer for three (3) years following expiration of the Agreement. Flex-Plan agrees to provide such assistance as may be necessary to facilitate the review or audit by the Employer to ensure compliance with applicable accounting and financial standards. This provision is hereby considered to be included within, and applicable to, any subcontractor agreement entered into by the CONTRACTOR in performance of any work hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges by Flex-Plan, due to no fault of the Employer in excess of one percent (1%) of the total contract value, Flex-Plan will correct and remit such overcharges to the Employer. Additionally, Flex-Plan will reimburse the Employer the reasonable cost of the Employer's audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Flex-Plan's invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, unless such delay is caused Employer, or necessary to determine the amount payable, from presentation of the Employer's audit findings to the Flex-Plan.

4.2. FEES AND CHARGES

Charges for the services provided under this Agreement shall be in accordance with the schedule set forth in Schedule A. Charges set forth in Schedule A shall remain in effect until July 30, 2020, which is the Initial Fee Guarantee Period. The Employer will pay the fees agreed to by Flex-Plan and the Employer within thirty (30) days of the billing date.

Following the Initial Fee Guarantee Period, Flex-Plan may propose changes to Schedule A by providing a minimum of 120 days written notice to the Employer, enclosing a substitute Schedule A. The substitute Schedule A shall take effect the first day of the month following the 120-day notice. The Employer has the right to terminate the Agreement prior to the effective date of the substitute Schedule A by giving written notice to Flex-Plan. If written notice of termination is not received prior to the effective date of the changes, the new fees will go into effect.

Employer agrees to reimburse Flex-Plan for the amount of any taxes, or other charges, in connection therewith, assessed against Flex-Plan or for which Flex-Plan has been made a collection agent with respect to the services provided under this Agreement.

Flex-Plan may retain Retiree Monthly Contribution Amounts collected up to the amount of any fees owed to Flex-Plan if the Employer fails to pay any required fee or charge within thirty (30) days of the billing date. The billing date is the date of the invoice.

If the Employer uses the services of Flex-Plan, this Agreement will be deemed to be in effect even if a copy has not been signed and returned by the Employer, and all fees and monthly charges will be due and payable as set forth on in Schedule A.

4.3. INDEMNIFICATION

Employer will, to the extent permitted by Section 768.28, Florida Statutes, indemnify and hold Flex-Plan, its officers, managers, directors, and employees harmless against claims, liabilities, damages, or penalties (collectively "claims") to the extent the claims are caused by Employer's acts or omissions that are dishonest, fraudulent or illegal, in bad faith or reckless, or the Employer's intentionally wrongful performance or nonperformance of obligations under this Agreement.

Flex-Plan will indemnify and hold Employer, its officers, managers, directors, and employees harmless against claims, liabilities, damages, or penalties (collectively "claims") to the extent claims are caused by Flex-Plan's acts or omissions that are dishonest, fraudulent or illegal, in bad faith or reckless, or Flex-Plan's intentional wrongful performance or nonperformance of obligations under this Agreement. This indemnification and hold harmless does not apply to any benefits that are payable under the Plan.

Flex-Plan is not responsible for any special, incidental, or consequential damages even if Flex-Plan has knowledge of the possibility of such potential loss or damage. Flex-Plan is not responsible for failure to provide services if due to any cause or condition beyond the reasonable control of Flex-Plan.

4.4. TERM; TERMINATION

This Agreement will continue in effect for a minimum period of thirty-six (36) months from the original Effective Date of this Agreement unless terminated earlier pursuant to the terms of this Agreement. Employer shall have the option to renew this Agreement for two (2) additional twelve (12) month periods at the rates set forth in the Initial Fee Guarantee. Continuation of this Agreement beyond the initial thirty-six (36) month period is a prerogative of the Employer, and not a right of Flex-Plan. This prerogative will be exercised only when such continuation is clearly in the best interest of the Employer.

This Agreement will terminate upon the earliest of the following events:

- a) Upon written notice by Flex Plan at least 180 days before the date termination is to be effective;
- b) Employer, at its sole discretion, reserves the right to terminate this Agreement upon thirty (30) days written notice. Upon receipt of such notice, Flex-Plan shall not incur any additional costs under this Agreement. The Employer shall be liable only for reasonable costs incurred by Flex-Plan prior to the notice of termination. The Employer shall be sole judge of reasonable costs;
- c) Upon written notice by the Employer prior to the effective date of a substitute Schedule A;
- d) At Flex-Plan's election upon the Employer's failure to pay any required fee or charge within 30 days of the billing date, which is the date of the invoice Employer reserves the right to terminate this Agreement when funds are not appropriated or otherwise made available to support continuation of performance in a current or subsequent fiscal year. If Employer terminates under this provision, this Agreement will be cancelled and Flex-Plan shall be reimbursed for the reasonable value of any non-recurring costs incurred amortized in the price of the services delivered hereunder.
- e) At Flex-Plan's election when changes to federal or state law that necessitates a change in procedure that requires issuance of a new Agreement or addendum;
- f) If either the Employer or Flex-Plan does not materially meet its obligations as set forth in this Agreement within thirty (30) days after receiving written notice of a breach then the other party shall have the immediate right to provide written notice of termination of this Agreement. The Employer's obligation to pay all undisputed fees that have accrued to the date of termination shall survive the termination of the Agreement.

Flex-Plan may suspend and/or terminate any or all services, in whole or in part, if Employer: files for bankruptcy, becomes or is declared insolvent, is the subject of any proceedings (not dismissed within thirty (30) days) related to its liquidation, insolvency or the appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditors, takes any corporate action for its winding-up, dissolution or administration, enters into an Agreement for the extension or readjustment of substantially all of its obligations, or recklessly or intentionally makes any material misstatement as to its financial condition. Termination of this Agreement shall not terminate the rights or obligations of either party arising prior to the effective date of such termination. The indemnity, confidentiality, and privacy provisions of this Agreement shall survive its termination.

Flex-Plan will charge a shipping and handling fee for the return of retiree billing information to the Employer or its representative. The fee will be determined by Flex-Plan and will consist of reasonable compensation for time expended and reimbursement for expenses incurred for materials and postage. Flex-Plan may retain copies of such information as necessary to demonstrate compliance with this Agreement.

Under no circumstances will Flex-Plan be obligated to notify any Retiree or any other person of the termination of this Agreement.

4.5. GOVERNING LAW

This Agreement shall be governed by the laws of the state of Florida and any dispute arising out of this Agreement will be settled in any court of competent jurisdiction located in Lake County, Florida.

4.6. SCHEDULES AND ADDENDA

Attached to this Agreement are the following Schedules and Addenda, which are incorporated in this Agreement:

- Schedule A – Schedule of Selected Services and Fees

- Schedule B – RFP Scope of Work and RFP Questions Responses
- Schedule C – Business Associate Agreement

Retiree Billing Services Administrative Agreement between Lake County, Florida and Flex-Plan Services, Inc.

IN WITNESS WHEREOF Flex-Plan Services, Inc. and the Employer, by their duly authorized representatives, have executed this Agreement.

"Flex-Plan"
FLEX-PLAN SERVICES, INC.

By: _____ Jim Aitken

Title: President

Date: 9/15/2015

LAKE COUNTY, FLORIDA


Barnett Schwartzman
Procurement Services Manager

189015

Approved as to form and legality:


Sanford A. Minkoff
County Attorney

Schedule A

The Retiree services are based on the number of plans, family units and benefit eligible employees. The initial set up and annual renewal fees are based on the number of plans and family units enrolled. The monthly administration fee is based on a PEPM rate billed at the start of each month.

| | |
|--|-------------------------------------|
| Initial Set-Up | |
| Initial Plan/Rate Set-Up Fee | Waived |
| Initial Participant Set-Up/Communication Fee | Waived |
| Minimum Initial Set-Up Fees | Waived |
| Annual Renewal | |
| Renewal Fee for Plan and Rate Changes | Waived |
| Enrollee Election/Rate Change Letter | Waived |
| Minimum Renewal Processing Fee | Waived |
| Monthly Administration | |
| Base Monthly Administration Fee ¹ | \$5.50/pppm |
| Pro-Rated or Age-Banded Plan Fee | N/A |
| Minimum Monthly Fee | Waived |
| 2% Administration Fee ² | Retained or Invoiced by FPS |
| Miscellaneous Services | |
| Notifications Required by Legislative Changes | \$10.00 per letter or notification |
| Manual Data Entry Fee | \$5.00 per "participant" entered |
| Special Handling ³ | \$15.00 per occurrence plus postage |
| Optional Services | |
| Open enrollment services for enrolled family units | Included |
| Carrier Direct Eligibility (Option 1) | Included |
| Carrier Direct Premium Remittance (Option 2) | Included |

¹This rate is used to calculate the monthly fee that will be uniform during the guarantee period.

²If this fee is not added to the rates and paid by participants, FPS will invoice the employer for the 2% allowable fee.

³Includes rush notices, non-standard shipping, employer invoicing of premiums, etc....)

Schedule B

Scope of Services

Provide Benefit Administrative Services, with no minimum participation requirements, including:

- Consolidated Omnibus Budget Reconciliation Act (COBRA) Administration & Compliance
- Retiree Billing and Administration

1.1 COBRA

COBRA administration is currently processed by a Third Party Vendor and proposals for COBRA notifications, billing, and premium collection are being sought. Medical, dental, vision and FSA are offered, when applicable, under COBRA.

Proposers should provide costs based on retention of 2% administration fee.

Please see table with COBRA activity below.

| Activity | Frequency |
|---|--------------------------|
| Average Qualifying Event Notices on a monthly basis | 20 (includes dependents) |
| # of COBRA elections generated 10/1/13 to 9/30/14 | 15 |

1.2 Retirees

Employees retiring from the Employer have the option to continue benefit participation at their own expense. Medical Dental and Vision benefits are available options.

Retiree billing and collection is currently performed by a Third Party Vendor. Retiree premium does allow a 30 day grace period.

Please see table with Retiree activity below.

| Activity | Frequency |
|--|-----------|
| Average Monthly Billing Takeover events (10/1/13 – 9/30/14) | 2 |
| # of Retirees currently on the medical plan (not including dependents) (as of 2/26/15) | 33 |

1.3 Enrollment

Currently, COBRA participants elect benefit options via paper enrollment forms. Retirees enroll via paper enrollment forms.

1.4 Scope of Administrative Services Requested

Provide Benefit Administrative Services, with no minimum participation requirements, including COBRA Administration & Compliance and Retiree Billing and Administration.

- Ensure the security of former employee or retiree information; protect against anticipated threats or hazards to the security of such information; and protect against unauthorized access to or use of such information.
- Provide account management reports to the Employer on a monthly basis.

- c. Provide employer tracking services that include statistical information on retiree, COBRA enrollments, transactions and past due premiums.
- d. Develop employee education materials and plan document provisions including updates and revisions as a result of any federal or state mandate changes affecting benefits under employee benefits administrative services, to be reviewed and approved by the Employer.
- e. Provide administrative guidance on changes in COBRA, and/or Retiree administration laws.
- f. Retain records pursuant to current regulations.
- g. The Proposer shall allow the employer to update enrollment information via electronic filing and/or access to a Client Portal.
- h. The Proposer shall process COBRA elections within specified timeframes.
- i. Send out COBRA enrollment materials within specified timeframes.
- j. Mail acknowledgement of notices to new hires, COBRA participation to new enrollees, and Qualifying Event Notices to eligible employees and dependents.
- k. Conduct premium calculation, billing to enrollees, and management of ongoing premium collection process for COBRA, and Retiree Services.
- l. Allow for automatic bank account deductions for COBRA, and Retiree premiums.
- m. Assume liability for services rendered.

1.5 Customer Service and Staffing

- a. Provide customer service (inbound and outbound) using various methods (email, phone, web) for all participants.
- b. Assure that all customer service and claims staff are trained in the specific technical issues of the Employer's account.
- c. Provide year round access to toll free customer service for covered persons. This customer service function must be available to start at the effective date of the Contract.
- d. Record and maintain information regarding service-related or other complaints reported by covered employees, retirees and/or employee representatives.
- e. Provide customer notifications regarding account balance, pending reimbursements and recent plan updates using various methods of communication (email alerts, text messages).
- f. Administer, at least semi- annually, customer service surveys and provide summary reports to the Employer.

1.6 Account Management

- a. Provide advanced notification of any business mergers, along with complete disclosure of impact to current administration.
- b. Designate an account manager who is able to make decisions, or report to a person who can make decisions, concerning process changes, as required, to oversee this account.
- c. Notify the Employer of any changes in account management or contact persons immediately. Any change in the assigned account manager must be approved by the Employer.
- d. Be available to meet telephonically on a monthly basis, in person semi-annually or annually, and as deemed necessary by the Employer.
- e. Provide an annual account management performance survey to be completed by the Employer.

1.7 Communication and Marketing

- a. Upon approval from the Employer, assume responsibility for coordinating communication and marketing activities related to Services.
- b. Assume responsibility for all costs of producing, printing, and mailing/distributing adequate quantities of marketing and administrative supplies as designated by the Employer. The format and content of all materials used for the Employer account shall be satisfactory to the Employer.
- c. Provide electronic communications, upon approval by the Employer, directly to enrolled members.
- d. Prior to and during annual enrollment, general marketing and information materials will be developed by the Employer. The Proposer may use Proposer-specific informational materials, if deemed appropriate by the Employer, upon the Employer's review.

1.8 Optional Services

The Employer is interested in exploring the following options and their additional cost (if any):

- a. Provide annual enrollment assistance, including an on-site representative for 3-4 weeks to attend annual enrollment meetings.
- b. Directly interface with Employer carriers regarding COBRA, and Retiree enrollments, and terminations.
- c. Coordinate with the Florida Retirement System (FRS), allowing for FRS deduction of premium payments, annual FRS reporting for premiums paid.

1.9 Implementation

Designate an implementation team of the Proposer's experienced staff to work with the Employer and/or it's consultants to effectively implement the program on schedule.

1.10 Plan Cost

Provide guaranteed rate quotes for the initial three years requested for COBRA and Retiree Billing services.

COBRA ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement") between Flex-Plan Services, Inc. ("Flex-Plan") and Lake County, A Political Subdivision of the State of Florida ("Employer"), effective July 1, 2015 ("Effective Date"), specifies the services to be provided by Flex-Plan for the Employer's group health Plan continuation requirements under COBRA.

RECITALS

WHEREAS, the Employer maintains one (1) or more group health Plans that the Employer has determined are subject to the group health Plan continuation requirements of Federal law, commonly known as "COBRA";

WHEREAS, Pursuant to RFP #15-0009, the Employer desires to engage Flex-Plan in Third Party Administration (TPA) services to assist the Employer in complying with the requirements of COBRA;

NOW, THEREFORE, in consideration of the foregoing and the terms conditions set forth in this document, the Employer and Flex-Plan agree as follows:

1. DEFINITIONS

- 1.1. "Agreement" means this Administration Agreement, its Addenda, and Schedules, as any of them may be amended from time-to-time.
- 1.2. "Business Associate Agreement", "BAA" means an agreement between the Employer and Flex-Plan which outlines responsibilities between the Employer and Flex-Plan Services as it relates to HIPAA, HITECH and PHI compliance, attached hereto and incorporated herein as **Schedule C**.
- 1.3. "Carrier" means (a) any company that acts as an insurer or (b) a self-insured Plan.
- 1.4. "COBRA Group Application" means the "COBRA Group Application" provided to the Employer for completion by the Employer prior to the initial account setup by Flex-Plan.
- 1.5. "COBRA" means the group health plan continuation coverage provisions set forth in section 4980B of the Internal Revenue Code of 1986, sections 601 thru 608 of ERISA, sections 2201 through 2208 of the Public Health Services Act, and the regulations promulgated thereunder.
- 1.6. "Continuation Coverage" means the extended group health plan coverage required by COBRA.
- 1.7. "Election Notice" means the notice of the right to elect Continuation Coverage the Plan administrator provides to Qualified Beneficiaries as required by COBRA.
- 1.8. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
- 1.9. "General Notice" means the general notice of continuation coverage that the Plan administrator provides to covered employees and covered spouses as required by COBRA.
- 1.10. "COBRA Grace Period" means the period within which the Monthly Contribution Amount(s) must be paid in full by or on behalf of a Qualified Beneficiary. "COBRA Grace Period" includes the 45-day period that begins when a Qualified Beneficiary elects Continuation Coverage (within which the initial contribution of required COBRA Monthly Contribution Amounts must be made). Thereafter, unless

the Employer directs otherwise, the COBRA Grace Period for any month of Continuation Coverage is the period that ends thirty (30) days after the first day of that month.

- 1.11. "HIPAA" means the group health plan portability provisions or the administrative simplification provisions, as applicable, of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations thereunder.
 - 1.12. "HITECH" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy) and the regulations thereunder.
 - 1.13. "Monthly Contribution Amount" means the amount that must be contributed by or on behalf of a Qualified Beneficiary for a month of Continuation Coverage.
 - 1.14. "Notice of Qualifying Event" means the notice provided by a covered employee or Qualified Beneficiary to the Plan administrator of a Qualifying Event that is attributable to a divorce, legal separation, or dependent child's loss of dependent status, as required by COBRA.
 - 1.15. "Notice of Termination" means the notice of termination of continuation coverage described in Department of Labor Regulation §2590.606-4(d).
 - 1.16. "Plan" means the group health Plan(s) subject to COBRA the Employer identifies in writing to Flex-Plan.
 - 1.17. "Protected Health Information" means Protected Health Information as described by HIPAA and its supporting rules and regulations.
 - 1.18. "Qualified Beneficiary(ies)" means the qualified beneficiary within the meaning of COBRA, generally a covered employee, a covered employee's spouse or former spouse, or a covered employee's dependent child who has lost coverage under the Plan due to one of the events described in COBRA and is either eligible for Continuation Coverage or has elected Continuation Coverage (which has not terminated).
 - 1.19. "Qualifying Event" means a qualifying event within the meaning of COBRA.
 - 1.20. "Schedule A" means the page titled Schedule A – Selected Services and Fees in this Agreement that itemizes the standard services, fees and charges, for a designated period of time, provided by Flex-Plan to the Employer, as well as any optional services that are available to and/or chosen by the Employer, subject to the terms and conditions of this Agreement.
 - 1.21. "TPA" or "Third Party Administrator" means Flex-Plan Services, Inc. who agrees to perform the delegated services specified in this agreement on behalf of the Employer.
2. **GENERAL PROVISIONS**
- 2.1. The Employer has selected Flex-Plan to provide the services identified herein pursuant to Request for Proposal (RFP) # 15-0009. Flex-Plan agrees to provide the services set forth in the Statement of Work shown in RFP # 15-0009, attached hereto and incorporated herein by reference as **Schedule B**. The parties hereby agree that the provisions of this Agreement more fully define the Statement of Work, but in the event of a conflict between the Statement of Work and the provisions herein, the provision which is more favorable to the Employer shall prevail.
 - 2.2. The Employer must submit a completed and signed COBRA Group Application at least sixty (60) days in advance of the Effective Date.

- 2.3. The Employer acknowledges that it is the "Employer," "Plan sponsor," and "Plan administrator" of the Plan for purposes of COBRA, ERISA, the Internal Revenue Code and the Public Health Services Act, and that the Employer retains the full responsibility under the law for its and the Plan's compliance.
- 2.4. The Employer shall also have final authority on all questions, including matters of clerical error, or concerning Qualified Beneficiaries' eligibility for Continuation Coverage under the Plan.
- 2.5. The Employer has the absolute authority with respect to the control, management, investment, or disposition and utilization of all Plan assets, if any; and Flex-Plan shall neither have nor be deemed to exercise any discretion, control, or authority with respect to the disposition of any Plan assets.
- 2.6. The Employer, the Plan, the Plan's administrator, their agents or assigns, and not Flex-Plan, is solely responsible for the review and payment of claims for benefits under the Plan and all Plan appeals under ERISA, including, without limitation, with respect to claims, benefits and eligibility determinations under the Plan.
- 2.7. The Employer shall establish reasonable procedures for the furnishing of certain COBRA notices by a covered employee or Qualified Beneficiary as required by Department of Labor Regulation §2590.606-3(b). The reasonable procedures shall require all covered employees and Qualified Beneficiaries to provide to Flex-Plan (on behalf of the Plan administrator) all four COBRA notices governed by the Department of Labor's COBRA notice regulations (i.e., the Notice of Qualifying Event, notice of disability determination, notice of occurrence of a second qualifying event, and notice of change in disability status) within the minimum notice periods permitted under COBRA. Among other things, this regulation requires the Employer to timely distribute an ERISA-compliant summary plan description that includes these reasonable procedures to employees covered by the Plan and to Qualified Beneficiaries. The form and contents of these reasonable procedures must be consistent with the responsibilities assigned to the Employer and to Flex-Plan under this Agreement.
- 2.8. The Employer has the responsibility to pay, or to cause to be paid, all excise taxes required under Internal Revenue Code section 4980B, as and when required, and to file, or to cause to be filed, IRS Form 8928, as and when required.
- 2.9. The Employer will promptly furnish to Flex-Plan such records and information in its possession or control as Flex-Plan may request to perform its obligations under this Agreement. The Employer has full responsibility and holds Flex-Plan harmless if incorrect information is provided to Flex-Plan by the Employer, its employees or its representatives, including Carriers. This includes, but is not exclusive to, COBRA Monthly Contribution Amounts.
- 2.10. In performing its duties and responsibilities pursuant to the Agreement, Flex-Plan acts as the agent of the Employer and at the direction of the Employer. Flex-Plan is not the "Plan administrator" or a "named fiduciary" (as those terms are defined in ERISA, the Internal Revenue Code, or the Public Health Services Act) with respect to the Plan.
- 2.11. Flex-Plan has no responsibility for the payment or reimbursement of any health care claims under the Plan.
- 2.12. Flex-Plan's duty and responsibility is limited to assisting the Employer with compliance with the Employer's responsibilities under COBRA. Any other requirements imposed by the Employer or the Plan(s) are not the responsibility of Flex-Plan.

- 2.13. Flex-Plan is not "a person who is responsible . . . for administering or providing benefits under the Plan" within the meaning of Internal Revenue Code section 4980B (e)(1)(B). Flex-Plan is not responsible for the payment of excise taxes imposed under Internal Revenue Code section 4980B and is not responsible for the preparation or filing of Internal Revenue Service Form 8928. Flex-Plan shall provide such information as Employer reasonably requests in order to calculate excise taxes imposed under Internal Revenue Code section 4980B or to prepare IRS Form 8928.
- 2.14. Unless otherwise notified in writing, Flex-Plan will be entitled to conclusively presume that a Qualified Beneficiary's eligibility for Continuation Coverage under the Employer's Plan(s) has not terminated by reason of coverage under another group health Plan or by becoming eligible for Medicare.
- 2.15. Flex-Plan is authorized to modify its internal procedures or processes in order to comply with COBRA or other applicable rules and regulations or to obtain administrative efficiencies. Any changes that impact the processes or responsibilities of the Employer will be communicated in a timely manner.
- 2.16. Flex-Plan shall maintain and archive all pertinent data for as long as the Agreement is in effect. Upon termination of the Agreement, Flex-Plan will return any Plan materials subject to the terms described in the Termination Section. Flex-Plan will provide access to records, in a mutually agreeable method, in its possession after the termination of this Agreement if requested by the Employer.
- 2.17. With the exception of a change in fees as described in Fees and Charges Section, this Agreement may be amended only in writing and signed by an officer of each party.
- 2.18. Failure by the Employer or Flex-Plan to insist upon compliance with any provision of the Agreement at any time or under any given set of circumstances shall not operate to waive or modify such provision or in any manner render it unenforceable, as to any other time or as to any other occurrence, whether or not the circumstances are the same.
- 2.19. No waiver of any of the terms and conditions of this Agreement shall be valid unless contained in a written memorandum and signed by an officer of the waiving party.
- 2.20. This Agreement is the final and complete Agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous negotiations or Agreements, written or oral, regarding such subject matter.
- 2.21. No assignment by any party pertaining to this Agreement shall be valid without the consent of the other party.
- 2.22. The scope of Flex-Plan's services as it relates to the COBRA services includes Qualified Beneficiaries who are receiving COBRA coverage at the Effective Date of this Agreement, as well as Qualified Beneficiaries who experience Qualifying Events on or after the Effective Date of this Agreement.
- 2.23. This Agreement is not intended to confer, and does not confer, upon any non-party (including any covered employee or Qualified Beneficiary) any rights or remedies. Any covenant, representation, or warranty made by Flex-Plan in this Agreement is made to Employer alone. Any covenant, representation, or warranty made by Employer in this Agreement is made to Flex-Plan alone.
- 2.24. All Protected Health Information as defined under HIPAA will be handled in a manner consistent with the privacy and security requirements under HIPAA. Protected Health Information will be used only

for the purpose of fulfilling Flex-Plan's responsibilities under this Agreement and as permitted or required by law. If, when, and to the extent that a court of competent jurisdiction determines that Flex-Plan is "contractor" as that term is used in Section 119.0701, Florida Statutes, Flex-Plan shall comply with all of the Florida Public Records' laws.

- 2.25. Flex-Plan shall provide an original certificate of insurance within five (5) days of the date this Agreement is fully executed, indicated that Flex-Plan has coverage in accordance with the requirements of this section. Flex-Plan shall provide and maintain at all times during the term of this Agreement, without cost or expense to the Employer, policies of insurance, with a company or companies authorized to do business in the State of Florida. Flex-Plan is responsible for the timely provision of certificates of insurance to the Employer at the certificate holder address evidencing conformance with the contract requirements at all times throughout the term of this Agreement.

Such policies of insurance, and confirming certificates of insurance, shall insure that Flex-Plan is in accordance with the following minimum limits:

General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverages:

| | |
|-----------------------------------|-----------|
| Each Occurrence/General Aggregate | \$500,000 |
| Products-Completed Operations | \$500,000 |
| Personal & Adv. Injury | \$500,000 |
| Fire Damage | \$50,000 |
| Medical Expense | \$5,000 |
| Contractual Liability | Included |

Automobile Liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverages:

| | |
|------------------------------|-----------|
| Combined Single Limit | \$300,000 |
| Or | |
| Bodily Injury (per person) | \$100,000 |
| Bodily Injury (per accident) | \$300,000 |
| Property Damage | \$100,000 |

Workers' Compensation Insurance in accordance with Washington law.

Employer's Liability insurance with the following minimum limits and coverage:

| | |
|-----------------------|-----------|
| Each Accident | \$100,000 |
| Disease-Each Employee | \$100,000 |
| Disease-Policy Limit | \$500,000 |

Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) as applicable, with minimum limits of \$500,000 and annual aggregate of \$1,000,000.

Lake County, A Political Subdivision Of The State Of Florida, And The Board Of County Commissioners, shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

Certificates of insurance shall provide for a minimum of fifteen (15) days prior written notice to the Employer of any material change or cancellation of the required insurance. It is Flex-Plan's specific responsibility to ensure that any such notice is provided within the stated timeframe.

Certificates of insurance shall identify the RFP number, contract, project, etc., in the Description of Operations section of the Certificate.

The Certificate holder shall be: LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS, P.O. BOX 7800, TAVARES, FL 32778-7800.

Certificates of insurance shall evidence a waiver of subrogation in favor of the Employer, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the Employer.

The Employer shall be exempt from and in no way liable for any sums of money which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of Flex-Plan and/or subcontractor providing such insurance.

Neither approval by the Employer of any insurance supplied by Flex-Plan, nor a failure to disapprove that insurance, shall relieve Flex-Plan of full responsibility of liability damages, and accidents as set forth herein.

If it is not possible for Flex-Plan to certify compliance, on the certificate of insurance, with all of the above requirements, then Flex-Plan is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

3. COBRA ADMINISTRATIVE RESPONSIBILITIES

INITIAL ACCOUNT SETUP

3.1. EMPLOYER

- 3.1.1. The Employer must identify in writing to Flex-Plan each separate Plan and its contractual rates for which Flex-Plan is to provide services at least sixty (60) days in advance of the Effective Date unless otherwise agreed.
- 3.1.2. The Employer must identify in writing to Flex-Plan each Qualified Beneficiary and their elected Plans for which FPS is to provide services at least sixty (60) days in advance of the Effective Date unless otherwise agreed.
- 3.1.3. If the Employer receives a COBRA election form from a Qualified Beneficiary who was provided an Election Notice before the Effective Date of this Agreement, the Employer will immediately forward the election form and enrollment information to Flex-Plan to facilitate the collection of COBRA premium payments.

3.2. FLEX-PLAN

- 3.2.1. Flex-Plan will establish the Employer's Plans in its various systems and will confirm accuracy of the COBRA Monthly Contribution Amounts established with the Employer.

- 3.2.2. Flex-Plan shall send a notice of administrative change to all Qualified Beneficiaries who are receiving Continuation Coverage on the Effective Date and direct that their COBRA premium payments and notice of eligibility or enrollment changes be sent to Flex-Plan.

COBRA NOTICE DATA SUBMISSION

3.3. EMPLOYER

- 3.3.1. The Employer will submit COBRA general and election notice data to Flex-Plan using the Flex-Plan online internet service. The Employer may use other methods such as email, fax, or Excel spreadsheet, with the approval of Flex-Plan and subject to an additional fee as detailed on Schedule A.
- 3.3.2. The Employer and Flex-Plan may agree to establish electronic communications for the submission of COBRA General Notice and Election Notice data. This may require specialized computer programming time and Flex-Plan reserves the right to charge a specialized computer programming fee or data entry fee as detailed on Schedule A.

GENERAL NOTICE ISSUANCE

3.4. EMPLOYER

- 3.4.1. Flex-Plan will issue a General Notice of COBRA rights to newly enrolled active employees and/or spouses upon receipt of required information from the Employer. Such requests must be made within sixty (60) days of the active employee's and/or covered spouse's enrollment in the Plan.
- 3.4.2. As an optional service and subject to the additional fees as denoted on Schedule A, the Employer can provide the required data to Flex-Plan for the issuance of a General Notice to all covered active employees and their spouses in a "mass mailing". This information can be provided in an Excel spreadsheet in a format acceptable to Flex-Plan.

3.5. FLEX-PLAN

- 3.5.1. Within fourteen (14) calendar days following Flex-Plan's receipt of complete data from the Employer, Flex-Plan will issue a General Notice to the affected employee and, if any, covered spouse.

ELECTION NOTICE, ELECTION PROCEDURES, AND COBRA ADMINISTRATION

3.6. EMPLOYER

- 3.6.1. The Employer will provide the required notice data to Flex-Plan within thirty (30) days of the date of Qualifying Event that is due to :
- 3.6.1.1. Termination of an employee's employment;
 - 3.6.1.2. Reduction in an employee's hours that results in a loss of coverage under the Plan;
 - 3.6.1.3. Employee's death; or
 - 3.6.1.4. Employee's entitlement to Medicare that results in a loss of coverage under the Plan for the employee's spouse or dependent child.

- 3.6.2. If the Employer does not provide Flex-Plan the complete required notice data until after the 30 - day period expires, Flex-Plan will provide the Qualified Beneficiaries their Election Notices within fourteen (14) calendar days after receiving the data, but subject to the following condition: if a Qualified Beneficiary timely elects Continuation Coverage, the Employer will have sole responsibility (a) for any adverse consequences (including, for example, a Carrier's refusal to provide coverage or a stop-loss insurer's refusal to reimburse claims because the Carrier or insurer deems the Employer to have provided untimely notice under COBRA) and (b) for ensuring the availability of Continuation Coverage to the Qualified Beneficiary for the maximum coverage period under COBRA.
- 3.6.3. The Employer will promptly notify Flex-Plan in writing when the Employer receives any notice or communication from a covered employee, Qualified Beneficiary or any other person relating to Continuation Coverage (including Notice of Qualifying Event, notice of occurrence of second qualifying event, notice of disability determination and notice of change in disability status), and shall promptly forward to Flex-Plan copies of all notices or other communications.
- 3.6.4. The Employer will notify Flex-Plan, in writing and in a manner acceptable to Flex-Plan, of the rates for Monthly Contributions Amounts and will do so at least thirty (30) days before their effective date. If the Employer notifies Flex-Plan of new rates less than thirty (30) days before their effective date, Flex-Plan may defer implementing the new rates to the first day of the first month that occurs more than 30 days after the Employer's notification to Flex-Plan. If the Monthly Contribution Amount is age-based or gender-based, the Employer must notify Flex-Plan of any change in the Monthly Contribution Amount that is based on a change in that rating category.
- 3.6.5. The Employer will notify the Carrier(s) of any COBRA coverage elections, terminations, or changes in status unless the Employer elected one of the Carrier direct options as denoted on Schedule A and described on Addendum 1. If the Plan or Carrier requires Monthly Contribution Amount payment information within a specific timeframe, it is the Employer's responsibility to independently obtain the information from the Employer's online account and to provide it to the Plan or Carrier.
- 3.6.6. The Employer will provide each Qualified Beneficiary all required enrollment materials (whether in connection with the Plan's open enrollment, a HIPAA special enrollment, or any other enrollment opportunity), unless the Employer elects on the COBRA Group Application (or by written request to Flex-Plan after the Effective Date), that Flex-Plan provide each Qualified Beneficiary the enrollment materials that the Employer provides to Flex-Plan for distribution to Qualified Beneficiaries, subject to additional fees as denoted on Schedule A. If the Employer elects to have Flex-Plan provide enrollment materials, the Employer must (a) designate the date by which Flex-Plan must mail the enrollment materials (the "mailing date") and (b) provide the enrollment materials to Flex-Plan in their complete form at least fifteen (15) business days before the mailing date. The Employer has the full responsibility for determining the mailing date, and Flex-Plan shall have no responsibility for the timeliness of enrollment materials that Flex-Plan mails on or before the mailing. For example, if the Employer includes a Summary of Benefits and Coverage in the enrollment materials, the Employer, not Flex-Plan, is responsible for determining a mailing date that will satisfy the deadline for providing the Summary of Benefits and Coverage.
- 3.6.7. The Employer will promptly notify Flex-Plan in writing when the Employer becomes aware of address changes of its employees, their spouses, and/or dependent children who are receiving Continuation Coverage.

3.6.8. The Employer will promptly notify Flex-Plan in writing if it becomes aware that a Qualified Beneficiary who is receiving Continuation Coverage:

- 3.6.8.1. has become entitled to Medicare;
- 3.6.8.2. has become covered by another Employer's group health plan;
- 3.6.8.3. has been determined to be disabled by the Social Security Administration;
- 3.6.8.4. has been determined to be no longer disabled by the Social Security Administration;
- 3.6.8.5. has become divorced or legally separated; or
- 3.6.8.6. no longer is a dependent child according to the terms of the Plan.

3.6.9. The Employer will promptly notify Flex-Plan in writing when its Plan is no longer subject to COBRA.

3.7. FLEX-PLAN

3.7.1. Flex-Plan will receive the Notice of Qualifying Event, notice of disability determination, notice of occurrence of a second qualifying event, and notice of change in disability status that a covered employee, Qualified Beneficiary, or representative acting on behalf of either may provide to the Plan administrator under COBRA.

3.7.2. Within fourteen (14) calendar days following Flex-Plan's receipt of complete COBRA data from the Employer for a Qualifying Event that is either termination of employment, reduction in hours, covered employee's death, or entitlement to Medicare that results in a loss of coverage, Flex-Plan will issue an Election Notice to the Qualified Beneficiaries.

3.7.3. If Flex-Plan receives a complete Notice of Qualifying Event relating to a divorce, legal separation or a child's loss of dependent status that the Employer, covered employee, Qualified Beneficiary or representative acting on behalf of either has provided within the minimum 60-day notice period that is the later of the date of the qualifying event or the date coverage under the Plan is lost, Flex-Plan will issue an Election Notice to the Qualified Beneficiaries within fourteen (14) calendar days. If a complete Notice of Qualifying Event is provided after the 60-day notice period has expired, Flex-Plan will not provide the Election Notice and will issue a notice of unavailability to the Qualified Beneficiaries.

3.7.4. If Flex-Plan receives a complete and timely notice of disability determination by the Social Security Administration that the covered employee, Qualified Beneficiary or representative acting on either's behalf has provided within the minimum 60-day notice period and before the expiration of the initial 18 month period of Continuation Coverage, then Flex-Plan will permit the extension of Continuation Coverage authorized under COBRA. If the notification is provided after the 60-day notice period or after the first 18 month period of Continuation Coverage, Flex-Plan will not permit the extension of Continuation Coverage and will issue a notice of unavailability to the Qualified Beneficiaries.

3.7.5. If Flex-Plan receives a complete and timely notice of a second Qualifying Event that the covered employee, Qualified Beneficiary or representative acting on either's behalf has provided within the minimum 60-day notice period, then Flex-Plan will permit the extension of Continuation Coverage authorized under COBRA. If the notification is provided after the 60-day notice period has expired, Flex-Plan will not permit the extension of Continuation Coverage and will issue a notice of unavailability to the Qualified Beneficiaries.

3.7.6. Flex-Plan shall track and record all COBRA deadlines.

3.7.7. Flex-Plan shall provide all required COBRA notices to the Qualified Beneficiary as required by COBRA. Flex-Plan, at its election, may also issue notices relating to COBRA or Continuation Coverage to Qualified Beneficiaries (or any other person or their representative) that are not required by COBRA and are not subject to this Agreement. Furthermore, the issuance of a non-required notice does not establish precedence for the future issuance of a particular notice.

3.7.8. Flex-Plan shall notify the Employer of any COBRA elections, termination, or changes in enrollment within ten (10) business days from receipt. Flex-Plan shall not be obligated to notify the Plan, or Carriers, of the eligibility status of any active or terminated Plan participants or Qualified Beneficiaries unless a Carrier Direct option is selected on the COBRA Group Application as denoted on Schedule A and described on Addendum 1.

3.7.9. If Flex-Plan is notified that an event has occurred during the period of Continuation Coverage that permits the termination of Continuation Coverage before the otherwise applicable maximum continuation period would expire, Flex-Plan shall provide the Notice of Termination.

MONTHLY CONTRIBUTION AMOUNT COLLECTION, ACCOUNTING, AND DISTRIBUTION

3.8. EMPLOYER

3.8.1. The Employer will remit the COBRA Monthly Contribution Amounts to the Plan (if the Plan is self-insured) or to the Carrier(s) (if the Plan is insured) and notify the Plan or Carrier(s) of the eligibility status of any Qualified Beneficiaries.

3.8.2. The Employer acknowledges that, in order to maintain Plan coverage in effect during the COBRA Grace Period, it may have to advance its own funds prior to Flex-Plan releasing the COBRA Monthly Contribution Amounts, which occurs approximately fifteen (15) business days following the close of the prior month's accounting period. In no event is Flex-Plan responsible for reimbursing the Employer for any funds the Employer may have advanced to the Carriers.

3.9. FLEX-PLAN

3.9.1. Flex-Plan, as agent of and on behalf of the Employer, shall collect COBRA Monthly Contribution Amounts in a secure manner compliant with financial business transaction laws and procedures, paid by or on behalf of Qualified Beneficiaries using reasonable care and due diligence according to IRS, DOL, and ERISA standards. Should the Employer or any other third party assume responsibility to pay COBRA Monthly Contribution Amounts for a Qualified Beneficiary, such payments must be remitted to Flex-Plan in the same manner as any other Monthly Contribution Amount.

3.9.2. Flex-Plan may deposit all COBRA Monthly Contribution Amounts it receives in a commingled non-interest bearing "holding" account. At least once a month Flex-Plan shall transfer the COBRA Monthly Contribution Amounts from a holding account to a non-interest bearing bank account from which Flex-Plan shall remit payments to the Employer as required or permitted under this Agreement. Flex-Plan will maintain an accounting of the Monthly Contribution Amounts in the bank account that are allocable to the Plan, adjusted for the remittances and for the reduction for fees.

- 3.9.3. Flex-Plan shall remit monthly to the Employer the net COBRA Monthly Contribution Amounts, reduced by the two percent administrative fee allowed under COBRA and any applicable service fees detailed on Schedule A. If the Plan's Monthly Contribution Amount does not include the two percent administrative fee, Flex-Plan will invoice the Employer monthly for the allowable two percent.
- 3.9.4. Unless otherwise directed by the Employer, Flex-Plan will not accept COBRA Monthly Contribution Amounts made after the Grace Period expires.
- 3.9.5. Flex-Plan will administer partial payment of a Monthly Contribution Amount in a manner consistent with Treasury Regulation §54.4980B-8, Q&A-5(d) that relates to premium payment shortfalls.
- 3.9.6. Special payment procedures applicable to Qualified Beneficiaries:
 - 3.9.6.1. Flex-Plan will not accept NSF checks (paper or virtual checks, returned for insufficient funds, stop payment, or closure of account) as payment of the Monthly Contribution Amount. If a check is returned NSF within the Grace Period, Flex-Plan will send its standard form letter requesting payment within the Grace Period of a Monthly Contribution Amount via cashier's check or money order. There is a replacement processing fee of \$25.00.
 - 3.9.7. No special handling fee applies when the Monthly Contribution Amount is paid with a virtual check through the Flex-Plan website.
 - 3.9.8. Flex-Plan shall be responsible and liable for premiums collected from Qualified Beneficiaries while in Flex-Plans possession prior to transmittal to Employer.
 - 3.9.9. Flex-Plan shall reconcile premiums collected with Flex-Plan's internal records.

MONTH-END ELIGIBILITY REPORTS, PREMIUM REPORTS AND ACCOUNT RECONCILIATION

3.10. EMPLOYER

- 3.10.1. The Employer will audit all month-end reports that Flex-Plan provides the Employer for accuracy and promptly report any errors or discrepancies to Flex-Plan within fourteen (14) days of receipt of the reports. Any failure by the Employer to report any errors or discrepancies will absolve Flex-Plan of any liability associated with the same.
- 3.10.2. If the Employer is reporting eligibility to the Carrier(s), any failure by the Employer to report any COBRA elections, terminations, or changes in status included in the month-end reports to the Carrier(s) will absolve Flex-Plan of any liability associated with the same.
- 3.10.3. If Flex-Plan is forwarding eligibility updates directly to the Carrier(s) as selected on the COBRA Group Application (Carrier direct option 1) and denoted on Schedule A and described in Addendum 1, it is the Employer's responsibility to perform the Account Reconciliation of the eligibility updates forwarded by Flex-Plan to the Carrier(s) with any billing type statements received or maintained by the Employer.

3.11. FLEX-PLAN

3.11.1. Flex-Plan will provide daily summary reports through the Employer's online account and monthly activity reports, either online or as hard or soft copies, within a reasonable period of time following the end of the prior month's activity.

4. MISCELLANEOUS

4.1. AUDITS

Right to Audit. The Employer reserves the right to require Flex-Plan to submit to an audit by any auditor of the Employer's choosing with Flex-Plan's approval. Flex-Plan shall provide access to all of its records in Flex-Plan's possession in the normal course of business, which relate directly or indirectly to this Agreement at its place of business during regular business hours consistent with HIPAA and other applicable privacy and security laws. Upon request Flex-Plan shall make such records available to the Employer for three (3) years following expiration of the Agreement. Flex-Plan agrees to provide such assistance as may be necessary to facilitate the review or audit by the Employer to ensure compliance with applicable accounting and financial standards. This provision is hereby considered to be included within, and applicable to, any subcontractor agreement entered into by Flex-Plan in performance of any work hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges by Flex-Plan, due to no fault of the Employer, in excess of one percent (1%) of the total contract value, Flex-Plan will correct and remit such overcharges to the Employer. Additionally, Flex-Plan will reimburse the Employer the reasonable cost of the audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Flex-Plans' invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, unless such delay is caused by Employer, or necessary to determine the amount payable, from presentation of the Employer's audit findings to Flex-Plan.

4.2. FEES AND CHARGES

Charges for the services provided under this Agreement shall be in accordance with the schedule set forth in Schedule A, which is attached hereto and incorporated herein by reference. Charges set forth in Schedule A shall remain in effect until July 30, 2020, which is the Initial Fee Guarantee period. If adequate funds are not available in the Employer's COBRA account (the bookkeeping account to which Monthly COBRA Contribution Amounts are allocated) to cover Flex-Plan's monthly administration fees, the Employer will pay the fees agreed to by Flex-Plan and the Employer within thirty (30) days of the billing date.

Following the Initial Fee Guarantee period, Flex-Plan may propose changes to Schedule A by providing a minimum of 120 days written notice to the Employer, enclosing a substitute Schedule A. The substitute Schedule A shall take effect the first day of the month following the 120-day notice. The Employer has the right to terminate the Agreement prior to the effective date of the substitute Schedule A by giving written notice to Flex-Plan. If written notice of termination is not received prior to the effective date of the changes, the new fees will go into effect.

Employer agrees to reimburse Flex-Plan for the amount of any taxes, or other charges, in connection therewith, assessed against Flex-Plan or for which Flex-Plan has been made a collection agent with respect to the services provided under this Agreement.

Flex-Plan may retain COBRA Monthly Contribution Amounts collected up to the amount of any fees owed to Flex-Plan if the Employer fails to pay any required fee or charge within thirty (30) days of the billing date. The billing date is the date of the invoice.

If the Employer uses the services of Flex-Plan, this Agreement will be deemed to be in effect even if a copy has not been signed and returned by the Employer, and all fees and monthly charges will be due and payable as set forth on in Schedule A.

4.3. INDEMNIFICATION

Employer will, to the extent permitted by Section 7968.28, Florida Statutes, indemnify and hold Flex-Plan, its officers, managers, directors, and employees harmless against claims, liabilities, damages, or penalties (collectively "claims") to the extent the claims are caused by Employer's acts or omissions that are dishonest, fraudulent or illegal, in bad faith or reckless, or the Employer's intentionally wrongful performance or nonperformance of obligations under this Agreement.

Flex-Plan will indemnify and hold Employer, its officers, managers, directors, and employees harmless against claims, liabilities, damages, or penalties (collectively "claims") to the extent claims are caused by Flex-Plan's acts or omissions that are dishonest, fraudulent or illegal, in bad faith or reckless, or Flex-Plan's intentional wrongful performance or nonperformance of obligations under this Agreement. This indemnification and hold harmless does not apply to any benefits that are payable under the Plan.

Flex-Plan is not responsible for any special, incidental, or consequential damages even if Flex-Plan has knowledge of the possibility of such potential loss or damage. Flex-Plan is not responsible for failure to provide services if due to any cause or condition beyond the reasonable control of Flex-Plan.

4.4. TERM; TERMINATION

This Agreement will continue in effect for a minimum period of thirty-six (36) months from the original Effective Date of this Agreement unless terminated earlier pursuant to the terms of this Agreement. Prior to, or upon completion, of the initial term of this Agreement, Employer shall have the option to renew this Agreement for two (2) additional twelve (12) month periods at the rates set forth in the Initial Fee Guarantee. Continuation of this Agreement beyond the initial thirty-six (36) month period is a prerogative of the Employer, and not a right of Flex-Plan. This prerogative will be exercised only when such continuation is clearly in the best interest of the Employer.

This Agreement will terminate upon the earliest of the following events:

- a) Upon written notice by Flex Plan at least 180 days before the date termination is to be effective;
- b) Employer, at its sole discretion, reserves the right to terminate this Agreement upon thirty (30) days written notice. Upon receipt of such notice, Flex-Plan shall not incur any additional costs under this Agreement. The Employer shall be liable only for reasonable costs incurred by Flex-Plan prior to the notice of termination. The Employer shall be sole judge of reasonable costs;
- c) Upon written notice by the Employer prior to the effective date of a substitute Schedule A;
- d) At Flex-Plan's election upon the Employer's failure to pay any required fee or charge within 30 days of the billing date, which is the date of the invoice; Employer reserves the right to terminate this Agreement when funds are not appropriated or otherwise made available to support continuation of performance in a current or subsequent fiscal year. If Employer terminates under this provision, this Agreement will be cancelled and Flex-Plan shall be reimbursed for the reasonable value of any non-recurring costs incurred amortized in the price of the services delivered hereunder;
- e) At Flex-Plan's election when changes to COBRA or other federal or state law that necessitates a change in procedure that requires issuance of a new Agreement or addendum;

- f) If either the Employer or Flex-Plan does not materially meet its obligations as set forth in this Agreement within thirty (30) days after receiving written notice of a breach then the other party shall have the immediate right to provide written notice of termination of this Agreement. The Employer's obligation to pay all undisputed fees that have accrued to the date of termination shall survive the termination of the Agreement.

Flex-Plan may suspend and/or terminate any or all services, in whole or in part, if Employer: files for bankruptcy, becomes or is declared insolvent, is the subject of any proceedings (not dismissed within 30 days) related to its liquidation, insolvency or the appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditors, takes any corporate action for its winding-up, dissolution or administration, enters into an Agreement for the extension or readjustment of substantially all of its obligations, or recklessly or intentionally makes any material misstatement as to its financial condition. Termination of this Agreement shall not terminate the rights or obligations of either party arising prior to the effective date of such termination. The indemnity, confidentiality, and privacy provisions, if any, of this Agreement shall survive its termination.

Flex-Plan will charge a shipping and handling fee for the return of COBRA information to the Employer or its representative. The fee will be determined by Flex-Plan and will consist of reasonable compensation for time expended and reimbursement for expenses incurred for materials and postage. Flex-Plan may retain copies of such information as necessary to demonstrate compliance with this Agreement.

Under no circumstances will Flex-Plan be obligated to notify any Qualified Beneficiary or any other person of the termination of this Agreement.

4.5. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida, and any dispute arising out of this Agreement will be settled in any a court of competent jurisdiction located in Lake County, Florida.

4.6. SCHEDULES AND ADDENDA


Attached to this Agreement are the following Schedules and Addenda, which are incorporated in this Agreement:

- Schedule A: Schedule of Selected Services and Fees
- Schedule B: Statement of Work from RFP #15-0009
- Schedule C: Business Associate Agreement
- Addendum 1: Carrier Direct Eligibility Option 1

Cobra Administrative Services Agreement between Lake County, Florida and Flex-Plan Services, Inc.

IN WITNESS WHEREOF Flex-Plan Services, Inc. and the Employer, by their duly authorized representatives, have executed this Agreement.

"Flex-Plan"
FLEX-PLAN SERVICES, INC.

By:  Jim Aitken
Title: President
Date: 9/15/2015

LAKE COUNTY, FLORIDA


Barnett Schwartzman
Procurement Services Manager
This 15th day of September, 2015.

Approved as to form and legality:


Sanford A. Minkoff
County Attorney

Schedule A

The COBRA services are based on the number of COBRA plans, COBRA family units and benefit eligible employees. The initial set up and annual renewal fees are based on the number of plans and COBRA family units enrolled. The monthly administration fee is based on a PEPM rate billed at the start of each month.

| | |
|---|-------------------------------------|
| Initial Set-Up | |
| Initial COBRA Plan/Rate Set-Up Fee | Waived |
| Initial COBRA Participant Set-Up/Communication Fee | Waived |
| Minimum Initial Set-Up Fees | Waived |
| Annual Renewal | |
| Renewal Fee for Plan and Rate Changes | Waived |
| COBRA Enrollee Election/Rate Change Letter | Waived |
| Minimum Renewal Processing Fee | Waived |
| Monthly COBRA Administration | |
| Base Monthly Administration Fee ¹ | \$0.40/pepm |
| Pro-Rated or Age-Banded Plan Fee | \$20.00/month |
| Minimum Monthly Fee | \$75.00 |
| 2% COBRA Administration Fee ² | Retained or Invoiced by FPS |
| Miscellaneous Services | |
| Notifications Required by Legislative Changes | \$10.00 per letter or notification |
| Manual Data Entry Fee | \$5.00 per "participant" entered |
| Special Handling ³ | \$15.00 per occurrence plus postage |
| Optional Services | |
| Mass mailing of initial general notice to all active employees and covered spouses. | \$50.00 fee plus \$5.00 per notice. |
| Open enrollment services for enrolled COBRA family units | Included |
| Carrier Direct Eligibility (Option 1) | Included |
| Educational Meetings | Included |

¹This rate is used to calculate the monthly fee that will be uniform during the guarantee period.

²If this fee is not added to the COBRA rates and paid by participants, FPS will invoice the employer for the 2% allowable COBRA fee.

³Includes rush notices, non-standard shipping, employer invoicing of COBRA premiums, etc....)

Schedule B

Scope of Services

Provide Benefit Administrative Services, with no minimum participation requirements, including:

- Consolidated Omnibus Budget Reconciliation Act (COBRA) Administration & Compliance
- Retiree Billing and Administration

1.1 COBRA

COBRA administration is currently processed by a Third Party Vendor and proposals for COBRA notifications, billing, and premium collection are being sought. Medical, dental, vision and FSA are offered, when applicable, under COBRA.

Proposers should provide costs based on retention of 2% administration fee.

Please see table with COBRA activity below.

| Activity | Frequency |
|---|--------------------------|
| Average Qualifying Event Notices on a monthly basis | 20 (includes dependents) |
| # of COBRA elections generated 10/1/13 to 9/30/14 | 15 |

1.2 Retirees

Employees retiring from the Employer have the option to continue benefit participation at their own expense. Medical Dental and Vision benefits are available options.

Retiree billing and collection is currently performed by a Third Party Vendor. Retiree premium does allow a 30 day grace period.

Please see table with Retiree activity below.

| Activity | Frequency |
|--|-----------|
| Average Monthly Billing Takeover events (10/1/13 – 9/30/14) | 2 |
| # of Retirees currently on the medical plan (not including dependents) (as of 2/26/15) | 33 |

1.3 Enrollment

Currently, COBRA participants elect benefit options via paper enrollment forms. Retirees enroll via paper enrollment forms.

1.4 Scope of Administrative Services Requested

Provide Benefit Administrative Services, with no minimum participation requirements, including COBRA Administration & Compliance and Retiree Billing and Administration.

- Ensure the security of former employee or retiree information; protect against anticipated threats or hazards to the security of such information; and protect against unauthorized access to or use of such information.
- Provide account management reports to the Employer on a monthly basis.

- c. Provide employer tracking services that include statistical information on retiree, COBRA enrollments, transactions and past due premiums.
- d. Develop employee education materials and plan document provisions including updates and revisions as a result of any federal or state mandate changes affecting benefits under employee benefits administrative services, to be reviewed and approved by the Employer.
- e. Provide administrative guidance on changes in COBRA, and/or Retiree administration laws.
- f. Retain records pursuant to current regulations.
- g. The Proposer shall allow the employer to update enrollment information via electronic filing and/or access to a Client Portal.
- h. The Proposer shall process COBRA elections within specified timeframes.
- i. Send out COBRA enrollment materials within specified timeframes.
- j. Mail acknowledgement of notices to new hires, COBRA participation to new enrollees, and Qualifying Event Notices to eligible employees and dependents.
- k. Conduct premium calculation, billing to enrollees, and management of ongoing premium collection process for COBRA, and Retiree Services.
- l. Allow for automatic bank account deductions for COBRA, and Retiree premiums.
- m. Assume liability for services rendered.

1.5 Customer Service and Staffing

- a. Provide customer service (inbound and outbound) using various methods (email, phone, web) for all participants.
- b. Assure that all customer service and claims staff are trained in the specific technical issues of the Employer's account.
- c. Provide year round access to toll free customer service for covered persons. This customer service function must be available to start at the effective date of the Contract.
- d. Record and maintain information regarding service-related or other complaints reported by covered employees, retirees and/or employee representatives.
- e. Provide customer notifications regarding account balance, pending reimbursements and recent plan updates using various methods of communication (email alerts, text messages).
- f. Administer, at least semi- annually, customer service surveys and provide summary reports to the Employer.

1.6 Account Management

- a. Provide advanced notification of any business mergers, along with complete disclosure of impact to current administration.
- b. Designate an account manager who is able to make decisions, or report to a person who can make decisions, concerning process changes, as required, to oversee this account.
- c. Notify the Employer of any changes in account management or contact persons immediately. Any change in the assigned account manager must be approved by the Employer.
- d. Be available to meet telephonically on a monthly basis, in person semi-annually or annually, and as deemed necessary by the Employer.
- e. Provide an annual account management performance survey to be completed by the Employer.

1.7 Communication and Marketing

- a. Upon approval from the Employer, assume responsibility for coordinating communication and marketing activities related to Services.
- b. Assume responsibility for all costs of producing, printing, and mailing/distributing adequate quantities of marketing and administrative supplies as designated by the Employer. The format and content of all materials used for the Employer account shall be satisfactory to the Employer.
- c. Provide electronic communications, upon approval by the Employer, directly to enrolled members.
- d. Prior to and during annual enrollment, general marketing and information materials will be developed by the Employer. The Proposer may use Proposer-specific informational materials, if deemed appropriate by the Employer, upon the Employer's review.

1.8 Optional Services

The Employer is interested in exploring the following options and their additional cost (if any):

- a. Provide annual enrollment assistance, including an on-site representative for 3-4 weeks to attend annual enrollment meetings.
- b. Directly interface with Employer carriers regarding COBRA, and Retiree enrollments, and terminations.
- c. Coordinate with the Florida Retirement System (FRS), allowing for FRS deduction of premium payments, annual FRS reporting for premiums paid.

1.9 Implementation

Designate an implementation team of the Proposer's experienced staff to work with the Employer and/or it's consultants to effectively implement the program on schedule.

1.10 Plan Cost

Provide guaranteed rate quotes for the initial three years requested for COBRA and Retiree Billing services.

Addendum 1: Option 1 – Carrier Direct Eligibility

NOTE: Availability of this option is contingent upon the agreement of the Carriers to accept updates from Flex-Plan.

Employer

1. Employer will provide a list of contact names and phone numbers of the Carrier for each Plan for which this service will be provided. The Employer must provide this information to Flex-Plan a minimum of forty-five (45) days in advance of the Effective Date of this Agreement.
2. It is the Employer's sole responsibility to reconcile the Carrier invoice for each Plan with the end-of-month reports provided by Flex-Plan. Any errors resulting from the failure to do so will be the sole responsibility of the Employer.

Flex-Plan

1. Flex-Plan will update the Carrier(s) with initial COBRA election, election changes, or Plan termination information as follows:
 - a. Initial COBRA elections – within ten (10) business days following receipt of a signed election form and the initial premium payment, Flex-Plan will notify the Carrier(s) of the election in a format mutually agreed upon between Flex-Plan and the Carrier(s).
 - b. Election changes – Flex-Plan will notify the Carrier(s) approximately fifteen (15) business days after the close of the preceding COBRA month of election changes (for example, adding or dropping coverage for qualified beneficiaries or their dependents) in the prior month.

Plan terminations – Flex-Plan will notify the Carrier(s) approximately fifteen (15) business days after the close of the preceding COBRA month of any terminations of Plan or COBRA coverage for qualified beneficiaries or their dependents in the prior month.

FLEX-PLAN SERVICES
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is entered into between Flex-Plan Services, Inc. ("Flex-Plan") and Lake County, A Political Subdivision of the State of Florida, and the Board of Commissioners acting on behalf of the Lake County, A Political Subdivision of the State of Florida, and the Board of Commissioners Benefits Plan (the "Plan") effective as of July 1, 2015. The parties intend to use this Agreement to satisfy the Business Associate Agreement requirements in the regulations at 45 CFR 164.308(b), 164.314(a), 164.502(e) and 164.504(e). The parties have entered into an Administrative Services Agreement under the terms of which Flex-Plan will provide certain services to the Plan and, in the performance of those services, will create, receive, maintain, transmit, use or disclose Protected Health Information on behalf of the Plan.

- I. **Definitions** Terms used but not otherwise defined in this Agreement shall have the same meaning as the meaning ascribed to those terms in HIPAA, HITECH, and any current and future regulations or official guidance promulgated under HIPAA or HITECH.
- 1.1 *Breach.* "Breach" shall have the same meaning as the term "breach" in 45 CFR 164.402.
 - 1.2 *Business Associate.* "Business Associate" shall mean Flex-Plan Services, Inc. ("Flex-Plan").
 - 1.3 *Covered Entity.* "Covered Entity" shall mean Lake County, A Political Subdivision of the State of Florida, and the Board of Commissioners Benefit Plan.
 - 1.4 *Electronic Protected Health Information.* "Electronic Protected Health Information" ("ePHI") shall have the same meaning as the term "electronic Protected Health Information" in 45 CFR 160.103, limited to the information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.
 - 1.5 *HHS.* "HHS" shall mean the Department of Health and Human Services.
 - 1.6 *HIPAA.* "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996.
 - 1.7 *HITECH.* "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act.
 - 1.8 *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
 - 1.9 *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
 - 1.10 *Protected Health Information.* "Protected Health Information" ("PHI") shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.
 - 1.11 *Required by Law.* "Required by Law" shall have the same meaning as the term "Required by Law" in 45 CFR 164.103.
 - 1.12 *Secretary.* "Secretary" shall mean the U.S. Secretary of the Department of Health and Human Services or his or her designee.
 - 1.13 *Security Incident.* "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304.
 - 1.14 *Security Rule.* "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subparts A and C.
 - 1.15 *Standards for Electronic Transactions Rule.* "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.

- 1.16 *Subcontractor.* "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR 160.103.
- 1.17 *Unsecured Protected Health Information.* "Unsecured Protected Health Information" shall have the same meaning given the term "unsecured protected health information" in 45 CFR 164.402.

II. Obligations and Activities of Business Associate

- 2.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- 2.2 Business Associate agrees to take reasonable efforts to limit its use and disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request. The foregoing minimum necessary standard does not apply to: 1) disclosures or requests by a health care provider for treatment purposes; (2) disclosures to the Individual who is the subject of the information; (3) uses or disclosures made pursuant to an Individual's authorization; (4) uses or disclosures required for compliance with HIPAA; (5) disclosures to HHS when disclosure of information is required under the Privacy Rule for enforcement purposes; (6) uses or disclosures that are required by other law.
- 2.3 Business Associate agrees to develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of PHI and comply with applicable requirements under the Security Rule.
- 2.4 Business Associate shall notify Covered Entity of any Breach of Unsecured PHI of which it becomes aware. Such notice shall include, to the extent possible, the information listed in Section 2.4.2. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the individual committing the Breach, who is an employee, officer, or other agent of Business Associate.
- 2.4.1 Notice shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach by Business Associate.
- 2.4.2 Notice of a Breach shall include, to the extent possible the following:
- (i) Identification of each individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired, used, or disclosed as a result of the breach.
 - (ii) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known.
 - (iii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, or account number).
 - (iv) The steps Individuals should take to protect themselves from potential harm resulting from the Breach.
 - (v) A brief description of any action taken to investigate the Breach, mitigate losses, and to protect against any further Breaches.
 - (vi) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- 2.4.3 If a law enforcement official determines that a notification or notice would impede a criminal investigation or cause damage to national security, such notification, notice or posting shall be delayed in accordance with 45 CFR 164.412.
- 2.4.4 Upon Covered Entity's request, Business Associate will provide notice of Breach to the Individual(s) affected and such notice shall include, to the extent possible, the information listed in 2.4.2, unless, upon occurrence of a Breach, Covered Entity requests to disseminate or Flex-Plan and Covered Entity agree that Covered Entity will disseminate the notice(s).

Any notice provided by Covered Entity to the Individual(s) shall comply with the content requirements listed in section 2.4.2., as well as any requirements provided under HIPAA, HITECH, and other applicable government guidance. Any notice required to be provided to HHS will be provided by Covered Entity.

- 2.5 Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement and/or any Security Incident of which it becomes aware.
- 2.6 Business Associate shall require each of its subcontractors, agents, or brokers, that creates, receives, maintains, or transmits PHI on behalf of Covered Entity to enter into a written agreement with Business Associate that provides satisfactory assurances that the subcontractor will appropriately safeguard that information, including without limitation the subcontractor's agreement to be bound by the same restrictions and conditions that apply to Business Associate with respect to such information.
- 2.7 Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI relating to the use and disclosure of PHI available to the Secretary, within ten (10) business days after receipt of written request or otherwise as designated by the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule
- 2.8 Business Associate agrees to document disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a written request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate will not be obligated to record disclosures of PHI or otherwise account for disclosures of PHI if neither Covered Entity nor Business Associate is required to account for such disclosures pursuant to the Privacy Rule.
- 2.9 Business Associate agrees to provide to Covered Entity or, upon Covered Entity's request, to an Individual, within ten (10) business days after receipt of written request, information collected in accordance with Section 2.8 of this Agreement, in order to permit Covered Entity to respond to a written request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- 2.10 Business Associate agrees to provide access, at the request of Covered Entity and within ten (10) business days after receipt of written request, to PHI in the custody and control of Business Associate in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. If PHI is maintained in a Designated Record Set electronically, and an electronic copy of such PHI is requested, Business Associate will provide an electronic copy in the form and format requested if it is readily producible in such form and format. If it is not readily producible in such format, Business Associate will work with the Covered Entity or, at the Covered Entity's request, the individual to determine an alternative form and format that enable Covered Entity to meet its electronic access obligations under 45 CFR 164.524.
- 2.11 Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set in the custody or control of Business Associate within ten (10) business days after receiving written request from the Covered Entity or, upon Covered Entity's request, as requested in writing by an Individual pursuant to 45 CFR 164.526.
- 2.12 In the event that Business Associate transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall ensure that any subcontractors or agents that assist Business Associate in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.
- 2.13 Business Associate shall not directly or indirectly receive payment in exchange for any PHI of an Individual unless Covered Entity or Business Associate received a valid authorization from the Individual, in accordance with 45 CFR 164.508, unless permitted under the HIPAA rules.
- 2.14 Business Associate shall not use PHI for marketing purposes without a valid authorization from the affected Individuals, unless such communication is permitted under the HIPAA rules
- 2.15 Business Associate shall not use or disclose genetic information for underwriting purposes in violation of the HIPAA rules.

III. Permitted Uses and Disclosures by Business Associate

- 3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity related to the Administrative Services Agreement between Business Associate and Covered Entity.
- 3.2 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that such disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instance of which it is aware in which the confidentiality of the information has been Breached.
- 3.3 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.4 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- 3.5 Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 164.502(j)(1).
- 3.6 Except as expressly permitted by this Agreement, Business Associate shall not use or disclose PHI in any manner that would violate the requirements of the Privacy Rule if done by Covered Entity.

IV. Obligations of Covered Entity

- 4.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 4.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

V. Permissible Requests by Covered Entity

- 5.1 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for uses or disclosures for the purposes of data aggregation, management, and administrative activities of Business Associate.

VI. Term and Termination

- 6.1 *Term.* This Agreement shall be effective as of the date that it is entered into, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 *Termination for Cause.* Upon Covered Entity's knowledge of a material breach of the terms hereof by Business Associate, Covered Entity shall provide written notice to Business Associate of the material breach, and Business Associate shall have the opportunity to cure that breach within the time period reasonably required to cure that breach. In the event that Business Associate does not

cure the breach or end the violation within that time period, then Covered Entity shall be entitled to provide notice of termination of the terms hereof.

- 6.3 *Effect of Termination.* It is agreed that due to the manner in which PHI is retained and the retention requirements of the Internal Revenue Service, returning or destroying all of the PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, is infeasible. Therefore, Business Associate shall extend the protections of this Agreement to such PHI, and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. Miscellaneous

- 7.1 *Definitions.* Terms used, but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations and other official government guidance.
- 7.2 *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 7.3 *Amendment.* This Agreement shall automatically amend to incorporate changes by Congressional act or by regulations of the Secretary that affect Business Associate or Covered Entity's obligations under this Agreement.
- 7.4 *Survival.* The respective rights and obligations of Business Associate under this Agreement shall survive the termination of the term of this Agreement.
- 7.5 *No Third-Party Rights.* Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns any rights, remedies, obligations or liabilities whatsoever.
- 7.6 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Washington to the extent not preempted by the Privacy and Security Rules or other applicable federal law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first stated above.

Flex-Plan Services, Inc.

By: Tina Davis
Tina Davis

Title: Privacy Officer

Date: 9/15/2015

Covered Entity:

Lake County, A Political Subdivision of the State of Florida, and the Board of Commissioners on behalf of the Lake County, A Political Subdivision of the State of Florida, and the Board of Commissioners Plan

By: [Signature]

Title: Procedural Services Manager

Date: 18 SEP 15